

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 96-12

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(The Dalles, Oregon) RM-8741

NOTICE OF PROPOSED RULE MAKING

Adopted: January 31, 1996; Released: February 13, 1996

Comment Date: April 5, 1996

Reply Comment Date: April 22, 1996

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by LifeTalk Broadcasting Association ("petitioner") requesting the allotment of Channel 268C3 to The Dalles, Oregon, and its reservation for noncommercial educational use.¹ Petitioner states that it will apply for the channel, if allotted.²

2. Generally, noncommercial educational stations operate within the reserved portion of the FM band (Channels 201-220). However, exceptions to this policy have been made where channels in the noncommercial band are not available because of foreign (Canadian or Mexican) allotments or potential interference to the operation of VHF television Channel 6 stations. In this instance, the only channel available within the noncommercial educational band is Channel 201C3 but this would cause interference to Station KOIN, Channel 6, at Portland, Oregon. Therefore, the reservation of Channel 268C3, if allotted, would comply with the Commission's policy.

Technical Summary

3. Channel 268C3 can be allotted to The Dalles in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.8 kilometers (5.5 miles) southwest to avoid a short-spacing to Station KPLZ, Channel 268C, Seattle, Washington.³ However, to overcome intervening terrain obstructions between this site and The Dalles, a tower of at least 209 meters (686 feet) is required. Because a Class C3 station, without such obstructions, can generally provide city-grade coverage with a tower of only 100 meters, petitioner is requested to affirmatively state that it would apply for and construct a station with the necessary higher tower.

4. We believe the public interest would be served by proposing the allotment of Channel 268C3 to The Dalles and its reservation for noncommercial educational use since it could provide the community with its fourth local FM and first noncommercial educational service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
The Dalles, Oregon	224C3, 249C2 283C	224C3, 249C2 *268C3, 283C

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **April 5, 1996**, and reply comments on or before **April 22, 1996**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

¹ Petitioner requested the allotment of Channel 256C3 to The Dalles but also noted that Channels 291C3, 240C3 and 268C3 were also available for allotment to the community. The staff engineering analysis of Channel 256C3 shows that the closest unobstructed transmitter site is 22.8 kilometers from The Dalles, which results in only half the community being covered with a 70 dBu city-grade signal. Likewise, the site restrictions required for Channels 291C3 and 240C3 are too far distant to provide The Dalles with the required 70 dBu city-grade signal. Therefore, the only channel available for allotment to the community is Channel 268C3.

² Although the petitioner's request was signed, it failed to include an affidavit verifying that the statements contained in its petition were accurate to the best of its knowledge. Section

1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.420(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. *See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, 3919, n.41 (1990). The petitioner is requested to rectify this omission in its comments.

³ The coordinates for Channel 268C3 at The Dalles is 45-31-28 North Latitude and 121-07-22 West Longitude.

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 LifeTalk Broadcasting Association
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 (Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
 Chief, Allocations Branch
 Policy and Rules Division
 Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial

comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.